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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/678,206	10/03/2003	Keith Colacioppo	9049	2120

27752 7590 06/13/2005

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CINCINNATI, OH 45224

EXAMINER

DOAN, ROBYN KIEU

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 06/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/678,206

Applicant(s)

COLACIOPPO ET AL.

Examiner

Robyn Doan

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>03/01/05</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

Applicant's Amendment filed 04/08/05 has been entered and carefully considered. Claims 1-3 have been amended. Limitations of amended claims have not been found to be patentable over newly discovered prior art, therefore, claims 1-3 are rejected under the new ground rejections as set forth below.

### ***Claim Objections***

Claim 3 is objected to because of the following informalities: claim 3, line 9 "first times" should be changed to --first times--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Paglericcio et al (6047703).

With regard to claim 1, Paglericcio et al discloses a hair treatment applicator (fig. 1) comprising a handle (12) having a longitudinal axis, a plurality of retaining structures

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98) connected to the handle, wherein each of the plurality of retaining structures being separated from each other by a separation volume (spaces between one retaining structure to another), wherein each of the plurality of retaining structures being substantially parallel to each other and being substantially perpendicular to the longitudinal axis of the handle and wherein said plurality of retaining structures hold the hair treatment.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Laforcade (6453909).

With regard to claims 2-3, DeLaforcade discloses a hair treatment applicator (figs. 2a and 3) comprising a handle (2) having a longitudinal axis, a first head (22, fig. 3) being connected to the handle, the first head having a plurality of first tines (5) disposing on the first head and forming a first retaining volume (30), a second head (26, fig. 3) being separate from the first head and also being connected to the handle, the second head having a plurality of second tines (5) disposing on the second head and forming a second retaining volume (34), wherein the plurality of first and second tines

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being substantially parallel to each other and being substantially perpendicular to the longitudinal axis of the handle (fig. 2a), a separation volume (surface 20, fig. 3), wherein the first and second retaining volumes being separated by the separation volume and wherein the first and second retaining volumes hold the hair treatment. De Laforcade does not disclose the plurality of tines of the first and second heads being disposed in a substantially square pattern, however, it would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the plurality of tines of the first and second heads being disposed in a substantially square pattern, since such a modification would have involved a mere change in the shape of the component.

Applicant's arguments with respect to claims 1-3 have been considered but are moot in view of the new ground(s) of rejection.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hoeffkes et al, Burke and Kaiser are cited to show the state of the art with respect to a hair treatment applicator.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robyn Doan  
June 8, 2005



John J. Wilson  
Primary Examiner